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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LOIS HILL DESIGNS LLC, a Delaware
Limited Liability Company,

Plaintiff,

v.

UNIQUE DESIGNS, INC., a New York
Corporation,

Defendant.

Case No. 2:20-cv-01403-RSL

SECOND AMENDED COMPLAINT

COMES NOW Plaintiff Lois Hill Designs LLC, by and through counsel Schwabe,
Williamson & Wyatt, P.C., and for its Second Amended Complaint against Defendant Unique
Designs, Inc. hereby states and avers as follows:

I. PARTIES

1.1. Plaintiff Lois Hill Designs LLC (“LH Designs”) is a limited liability company
organized under the laws of the State of Delaware with its principal place of business located
at 256 Bellevue Square in Bellevue, Washington.

1.2. Upon information and belief, Defendant Unique Designs, Inc. (“Defendant”) is
a corporation organized under the laws of the State of New York with its principal place of
business located at 521 Fifth Avenue in New York, New York.

II. JURISDICTION & VENUE

2.1. This Court has subject matter jurisdiction over this matter pursuant to RCW

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1 2.08.010.

2 2.2. This Court has personal jurisdiction over Defendant pursuant to RCW 4.28.185.

3 2.3. Defendant traveled to the State of Washington to negotiate the agreement that
4 is the subject of this lawsuit. While in the State of Washington, Defendant negotiated,
5 transacted, and otherwise entered into the agreement that is the subject of this lawsuit.

6 2.4. Defendant has transacted, and continues to transact, business in the State of
7 Washington, including but not limited to business with LH Designs, Blue Nile, Nordstrom,
8 Inc., and other Washington-based businesses.

9 2.5. Defendant's representatives have visited the State of Washington on multiple
10 occasions for business purposes, including but not limited to for purposes of negotiating and
11 establishing a business relationship with LH Designs.

12 2.6. Defendant sells goods in the State of Washington to Washington-based
13 consumers and retailers, including through brick-and-mortar department stores and through
14 online marketplaces. Defendant injects its products into Washington's stream of commerce.

15 2.7. Defendant has sufficient minimum contacts with the State of Washington and
16 has purposely availed itself of the laws, protections, and privileges of the State of Washington
17 such that asserting personal jurisdiction over Defendant does not offend traditional notions of
18 fair play and substantial justice.

19 2.8. Venue is proper in King County (Seattle designation) pursuant to RCW
20 4.12.025(1) and/or RCW 4.12.025(3)(c).

21 **III. FACTS**

22 3.1. LH Designs is a leading designer of globally inspired, contemporary, hand-
23 crafted fine jewelry and sterling silver jewelry. For 30 years, its founder, Lois Hill, has traveled
24 the world researching and exploring world cultures and historical arts. Ms. Hill has used her
25 research, experience, and knowledge to perfect her jewelry-making techniques and to create
26 unique collections of jewelry.

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1 3.2. LH Designs owns and controls the intellectual property associated with all Lois
2 Hill brand designs, products, and techniques, including but not limited to copyrights,
3 trademarks, and trade secrets. LH Designs is the global licensor of the Lois Hill brand
4 intellectual property.

5 3.3. LH Designs generally utilizes factories outside of the United States to
6 manufacture its jewelry and accessories, which are then sold through major retailers, specialty
7 stores, and online retailers.

8 3.4. Defendant is a New York-based international fine jewelry manufacturer and
9 wholesaler. Defendant markets products to high-end jewelers, online retailers, and mainstream
10 stores. It also sells to discounters and mass marketers such as Kohl's.

11 3.5. Around January 2019, Defendant's representatives traveled to Washington to
12 meet with Lois Hill and negotiate a Limited Licensing Agreement with LH Designs.

13 3.6. On or around February 1, 2019, LH Designs and Defendant entered into a
14 Limited Licensing Agreement (the "Agreement"). A true and correct copy of the executed
15 Agreement is attached hereto as Exhibit A.

16 3.7. Under the Agreement, Defendant was to use its expertise and substantial retail
17 distribution network to sell the Lois Hill brand and jewelry collections throughout North
18 America in department stores, online retailers, jewelry stores, and other major channels of
19 distribution.

20 3.8. The Agreement provided that the jewelry Defendant sells is to be manufactured
21 by certain producers, located in Indonesia and Thailand, with which LH Designs has existing
22 relationships prior to the signing of the Agreement.

23 3.9. The original term of the Agreement was 19 months between February 1, 2019,
24 and August 31, 2020.

25 3.10. The Agreement granted Defendant a non-exclusive, non-assignable, royalty-
26 bearing license to market, sell, and distribute Lois Hill brand products.

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1 3.11. In exchange for this license, as part of the Agreement, Defendant promised to
 2 (a) make cash advances toward the purchase of LH Designs' products; (b) purchase minimum
 3 amounts of product from LH Designs' preferred manufacturers; and (c) make royalty payments
 4 to LH Designs on back-end retail sales, among other terms and conditions.

5 3.12. For sterling silver product, Defendant promised to purchase goods from P.T.
 6 Laksmi, which is LH Designs' existing Indonesia-based manufacturer.

7 3.13. For diamond product, Defendant promised to purchase goods from Fineline,
 8 which is LH Designs' existing Thai-based manufacturer.

9 3.14. The Agreement also provides, "If [Defendant] proposes for any Product to be
 10 produced in a factory that [LH Designs] is not currently working with, [LH Designs] shall have
 11 the right to approve such factory prior to any work being performed. [LH Designs] will have
 12 the right to inspect such factory at any time for quality, IP protection, safety, and other matters
 13 reasonably related to production and other factors of importance to [LH Designs]."

14 3.15. Defendant promised to make initial purchases of LH Designs products totaling
 15 \$275,000 prior to August 31, 2019, and to purchase at least \$1,300,000 in LH Designs'
 16 products between August 1, 2019, and August 31, 2020.

17 3.16. The parties agreed and understood that a stable, regular cash flow to LH
 18 Designs would be critical to the licensing arrangement. Because LH Designs would need to
 19 maintain the financial viability and stability of its overseas producers during the term of the
 20 Agreement, LH Designs could not risk that Defendant would not make an agreed minimum
 21 amount of orders during the majority of the license term and then place a very large "catch-
 22 up" order at the end of the license term in order to satisfy the minimum \$1,300,000 sales
 23 threshold.

24 3.17. Therefore, in addition to promising to place initial purchases of \$275,000 and
 25 to make an initial payment of \$125,000, Defendant promised to make minimum monthly
 26 payments of \$100,000 per month between August 1, 2019, and August 31, 2020, payable on

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1 the 20th day of the previous month. These payments constitute required advances to be applied
 2 to future product on an accrual basis (to be used by August 31, 2020).

3 3.18. The crucial nature of these minimum monthly payments is expressly recognized
 4 in the Agreement, which provides: “All parties acknowledge and agree that these payments are
 5 required as a condition of [LH Designs] entering into this Agreement and will be paid by
 6 [Defendant] during the Term and are guaranteed by [Defendant].”

7 3.19. The requirement that Defendant make these \$100,000 payments on the
 8 twentieth day of each month was unconditional.

9 3.20. After signing the Agreement, Defendant began to pressure LH Designs into
 10 renegotiating the terms of the Agreement. Defendant continually campaigned to replace or
 11 modify the Agreement with terms that would be more favorable to Defendant. To that end,
 12 Defendant employed a strategy of depriving LH Designs and its producers of the necessary
 13 cash flow that LH Designs was entitled to under the Agreement, and which LH Designs needed
 14 in order to maintain the viability and operations of its overseas producers.

15 3.21. Defendant failed to make initial purchases of \$275,000 of product by August
 16 31, 2019, as required under the Agreement. That failure severely impacted LH Designs by
 17 depriving it of the cash flow it expected and needed in order maintain the viability and
 18 operations of its overseas producers. LH Designs had to keep the overseas produces afloat with
 19 cash infusions when Defendant failed to honor its obligations under the Agreement.

20 3.22. Defendant consistently paid the required \$100,000 monthly installments late.
 21 For example, the payment due on October 20, 2019, was not received until October 28, 2019
 22 – 8 days late. The monthly minimum payment that was due on November 20, 2019, was not
 23 received until November 28, 2019 – 8 days late. The monthly minimum payment that was due
 24 on December 20, 2019, was not received until January 4, 2020 – 15 days late. The January 20,
 25 2020 payment was not received until January 30, 2020 – 10 days late. The February 20, 2020
 26 payment was not received until February 27 – 7 days late.

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1 3.23. Defendant failed to make the \$100,000 payments due and payable under the
 2 Agreement on March 20, 2020, and April 20, 2020.

3 3.24. Defendant withheld the licensing royalty payments due to LH Designs under
 4 the “Royalty Payments” section of the Agreement, which were due on the fifteenth of each
 5 month. Defendant failed to pay the royalty payments when due on April 15, 2020, and March
 6 20, 2020.

7 3.25. With Defendant in material breach of the Agreement for an extended period of
 8 time, LH Designs terminated the Agreement for cause on May 1, 2020.

9 3.26. Upon information and belief, Defendant manipulated its order processing in bad
 10 faith in order to cause hardship to LH Designs and to unilaterally alter the terms of the
 11 Agreement, including by ordering only 558 units for a total of only \$21,707 of product during
 12 the first six months of the Agreement and thereafter placed orders for 35,000 units in July
 13 2019.

14 3.27. Upon information and belief, Defendant had already received these orders prior
 15 to July 2019, but deliberately refrained from passing them onto LH Designs in order to
 16 optimize its own cash flow and financial position without regard to the financial commitments
 17 owed to LH Designs under the Agreement. Such a delay placed pressure on LH Designs by
 18 depriving it of the regular cash flow it needed and made it difficult for LH Designs to satisfy
 19 the huge handmade order on a timely basis. Defendant attempted to use LH Designs’ difficulty,
 20 which Defendant created, to its advantage by trying to renegotiate existing terms of the
 21 Agreement for its own benefit.

22 3.28. Defendant also used other means to try to pressure LH Designs into submitting
 23 to its demands to renegotiate the terms of the Agreement. For example, Defendant has
 24 threatened to pull Lois Hill jewelry off of QVC, the home shopping network. Further,
 25 Defendant has threatened not to provide the “smooth transition that does not result in any loss
 26 of business for [LH Designs]” as required by the Agreement, in connection with doing business

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1 with customers such as QVC after the expiration or earlier termination of the Agreement.

2 3.29. Defendant informed LH Designs that it sent Lois Hill jewelry to other factories,
3 which LH Designs neither inspected nor approved.

4 3.30. Defendant threatened to withhold payments required under the Agreement
5 unless it received a 20% discount moving forward.

6 3.31. Defendant stated it would not make any additional payments due under the
7 Agreement on a going-forward basis.

8 3.32. Defendant consistently withheld the “detailed report[s]” from LH Designs,
9 which LH Designs is entitled to under the Agreement.

10 3.33. In May 2020, the Parties were in negotiations to resolve the disputes between
11 them. Both parties were represented by counsel in these negotiations.

12 3.34. Counsel for LH Designs reviewed a draft settlement agreement and provided
13 substantive revisions and comments in redline form, which LH Designs transmitted to
14 Defendant and Defendant’s counsel. While knowing that LH Designs was represented by
15 counsel, Defendant’s counsel engaged in ex parte communications with LH Designs in
16 violation of the Rules of Professional Conduct, specifically in communications with LH
17 Designs to dissuade LH Designs from requiring any security for the dismissal of this action in
18 the form of a confession of judgment, delayed dismissal until the terms of the settlement
19 agreement had been fulfilled, or other similar arrangement.

20 3.35. Any settlement agreement purported to be reached between LH Designs and
21 Defendant is void, unenforceable, and secured through illegal or improper means in violation
22 of the Rules of Professional Conduct.

23 3.36. Despite Defendant’s repeated breaches, LH Designs has fulfilled all order
24 requests and caused all goods to be shipped as requested, with the sole exception of one order
25 for Starboard (for retail sale aboard cruise ships), because Defendant notified LH Designs that
26 this shipment cannot be sent via common carriers UPS or DHL and must be sent via an

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1 international customs brokerage company named Malca Amit, which has not been able to
2 secure air transport from the origin in Indonesia to Hong Kong in light of the global COVID-
3 19 pandemic.

4 3.37. Following the termination, Defendant made one \$100,000 payment to LH
5 Designs on June 1, 2020. Defendant never made any payments corresponding to the advance
6 that was due on April 20, 2020, or any subsequent advances that would have been due on May
7 20, June 20, or July 20, 2020.

8 3.38. Following the termination, LH Designs honored all orders placed prior to
9 termination and has delivered, or caused to be delivered, goods corresponding to those orders.
10 LH Designs has not been fully paid for the goods delivered to Defendant at Defendant's
11 request.

12 3.39. The Parties have stipulated that the orders fulfilled after termination are
13 governed by the terms and conditions of the Agreement, subject to the reserved defenses in the
14 stipulation dated March 8, 2021.

15 **IV. FIRST CAUSE OF ACTION – BREACH OF CONTRACT**

16 4.1. LH Designs restates and incorporates by reference all prior paragraphs of this
17 Complaint as if fully set forth herein.

18 4.2. The Agreement is an enforceable written contract supported by valuable
19 consideration.

20 4.3. Defendant materially breached the Agreement by, at a minimum, failing to pay
21 \$100,000 advances when due, failing to pay \$100,000 advances that are past due and owing;
22 failing to purchase \$275,000 in product by August 31, 2019; failing to pay royalty payments
23 that are past due and owing; failing to seek LH Designs' approval to use alternative
24 manufacturers; failing to provide requested reports; failing to smoothly transition clients; and
25 otherwise repudiating Defendant's performance under the Agreement.

26 4.4. LH Designs has not materially breached the Agreement.

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4.5. LH Designs has incurred damages as a result of Defendant's breach of the Agreement, including but not limited to all lost profits on unperformed portions of the Agreement, unpaid advances due under the Agreement, unpaid royalties for orders placed pursuant to the Agreement, the costs incurred to keep the factories in business when Defendant failed to pay amounts due under the Agreement, and other direct, indirect, consequential, and incidental damages.

**V. SECOND CAUSE OF ACTION – BREACH OF IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING**

5.1. LH Designs restates and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

5.2. Defendant owes LH Designs an implied duty of good faith and fair dealing in Defendant's performance of the Agreement.

5.3. Defendant breached this implied duty by, at a minimum, entering into the Agreement without any intention to perform its terms and conditions; withholding or otherwise manipulating the timing of product orders to cause hardship to LH Designs; withholding or threatening to withhold payments due under the Agreement for the purpose of gaining leverage to renegotiate the terms of the Agreement; and threatening to damage LH Designs' prospective business interests with QVC or other market participants.

5.4. LH Designs has suffered actual damages as a result of Defendant's breach in an amount to be proven at trial.

VI. **THIRD CAUSE OF ACTION – DECLARATORY JUDGMENT EXCUSING FURTHER PERFORMANCE**

6.1. LH Designs restates and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

6.2. This Court has authority pursuant to RCW 7.24.010 to declare the rights, status, and legal relations of the parties.

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6.3. For the reasons stated above, Defendant materially breached the Agreement.

6.4. When one party is in material breach of a contract, the non-breaching party may treat the breach as a failure of a condition that excuses further performance and thus terminate the contract.

6.5. LH Designs petitions for declaratory relief pursuant to Chapter 7.24 RCW for a finding and declaration that LH Designs is excused from any further performance under the Agreement, and the Agreement shall be terminated. Such a determination shall not limit or impair LH Designs' entitlement to monetary damages.

6.6. Upon declaration of no further performance, LH Designs is entitled to an award of costs pursuant to RCW 7.24.100.

VII. PRAYER FOR RELIEF

Having set forth its Complaint, Plaintiff Lois Hill Designs LLC respectfully requests the following relief:

1. Money judgment in favor of Plaintiff Lois Hill Designs LLC and against Unique Designs, Inc. in an amount to be proven at trial but not less than \$2,250,000.

2. Declaratory judgment in favor of Plaintiff Lois Hill Designs LLC and against Unique Designs, Inc. excusing Plaintiff from any further performance under the Agreement and terminating the Agreement.

3. Pre-judgment interest at the statutory rate of 12% per annum from the earliest date of liquidation of all debts until the date of entry of judgment.

4. Post-judgment interest at the statutory rate of 12% per annum from the date of entry of judgment until paid in full.

5. Costs, disbursements, and attorneys' fees to the fullest extent allowed by law.

6. Any other relief this Court deems just and equitable.

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1 Dated this 20th day of May, 2021.

2 SCHWABE, WILLIAMSON & WYATT, P.C.

3

4 By: /s/ Ryan W. Dumm
5 Ryan W. Dumm, WSBA #46738
6 Email: rdumm@schwabe.com
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13 Seattle, WA 98101
14 *Attorneys for Plaintiff Lois Hill Designs*
15 *LLC*

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 20th day of May, 2021, I arranged for service of the foregoing
SECOND AMENDED COMPLAINT to the parties to this action as follows:

Jeremy E. Roller, Esq.
Arete Law Group PLLC
1218 Third Avenue, Suite 2100
Seattle, WA 98101
jroller@aretelaw.com
Attorney for Defendant Unique Designs, Inc.

by:

- U.S. Postal Service, ordinary first class mail
- U.S. Postal Service, certified or registered mail, return receipt requested
- hand delivery
- facsimile
- electronic service
- other (specify) _____

/s/ Ryan W. Dumm

Ryan W. Dumm, WSBA #42738